FOR ARGUMENT

In the Supreme Court of the United States

October Term, 1977
No. 76-1184

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF APPELLEES

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On Appeal From the United States Court of Appeals for the Eighth Circuit

BRIEF OF APPELLEES

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 545 F.2d 599 (1976). The opinion of the District Court is reported at 412 F. Supp. 372 (1976).

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered on December 2, 1976. The State filed a Notice of Appeal to this Court on December 7, 1976. The Jurisdictional Statement was filed on February 26, 1977. On October 3, 1977, the Court noted probable jurisdiction. The Court's jurisdiction rests on 28 U.S.C. §1254(2).

STATUTES INVOLVED

Pertinent provisions of the Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974) (the Minnesota Pension Act) are set forth and described in the opinion of the Court of Appeals, 545 F.2d 599, at 601-2. The statute in its entirety is set forth in the Appendix at A-132.

The federal statute with which the Minnesota Pension Act conflicts is the National Labor Relations Act, 29 U.S.C. §§151, *et seq.*

QUESTION PRESENTED

Whether, under Article VI of the Constitution of the United States, federal labor law preempts a Minnesota statute which imposes upon appellees pension obligations materially in excess of those previously established in collective bargaining, thereby nullifying contract terms of agreements protected by federal labor law, and impairing future bargaining.

STATEMENT OF THE CASE

The sole issue before the Court in this appeal is the question of preemption described above. The only contracts relating to that dispute are contracts between White[1] and the UAW,[2] the union representing White employees as their collective bargaining agent. This appeal does not

1. White Motor and White Farm, its subsidiary, are collectively referred to herein as "White." Appellant is referred to herein as "the State."

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions are collectively called the "UAW."

involve any claim that White has not honored and is not now honoring its collective bargaining agreements with the UAW. Specifically, there is no claim that White did not fund the pension plan in accordance with its contractual obligation. Moreover, despite the State's suggestions to the contrary, there is not involved here any quasi-contract claim against White for retirement benefits or any claim against the UAW for breach of its duty of fair representation.

Nor does this appeal involve the question of application of the contracts clause of the United States Constitution (Art. I, §10) or other constitutional challenges. As noted by the State (DB 4, n.3, 27, n.51),[3] challenges to the constitutionality of the Minnesota Pension Act have been raised in another suit, *Fleck v. Spannaus*, No. 3-75 Civ. 178 (D. Minn. Sept. 2, 1977), a case which does not involve federal labor law preemption. While White's amended complaint does raise constitutional challenges to the Minnesota Pension Act, there has been no hearing in this case on any such issues. It is clear, however, that the facts supporting White's constitutional challenges are materially different from the facts presented in *Fleck*.

Hagans v. Lavine, 415 U.S. 528 (1974), directed district courts to decide a Supremacy Clause claim of preemption before convening a three-judge court to consider an injunction on constitutional grounds. White, following the doctrine of *Hagans*, sought summary judgment or a preliminary injunction on the sole ground that the Minnesota Pension Act was preempted under the Supremacy Clause. The labor law preemption question raised by the District Court's denial of an injunction is the sole issue

3. References to pages of the brief of the State (defendant below) are noted as "DB ...."

which was passed upon by the Court of Appeals. It is the sole issue on appeal here.

White Motor is an Ohio Corporation. In 1963, as a result of acquisition of the assets of Minneapolis-Moline, Inc., White Farm, a subsidiary of White Motor, began operating farm equipment manufacturing plants in Hopkins and Minneapolis, Minnesota (A-22).[4] Both before and after this acquisition, the employees at these plants were represented by a labor union. Since 1955 that union has been the UAW (A-22).

In 1950, a pension plan was established through collective bargaining for these employees. In subsequent collective bargaining agreements with White and its predecessor the pension plan was amended to increase substantially the level of pension benefits. These increases in pension benefits were applied to years of prior service as well as to years of future service (A-22-23). The inevitable result was to increase the unpaid past-service liability. In 1968, the White-UAW pension plan called for funding of unpaid past-service liability on a 30 year basis. In 1971, this provision was amended through collective bargaining to lengthen the amortization period to 35 years (A-22-24).[5] Both funding schedules were consistent with industry practice (A-24).

At the conclusion of the 1971 contract negotiations, White and the UAW entered into collective bargaining

4. "A. ......" refers to pages of the Appendix.

5. Unpaid past-service liability is, at any given time, the excess of accrued liability of a pension fund over the present value of the assets of that fund (A-89). Deferred funding of past-service liability is a common feature of pension plans (A-24). In collective bargaining, the union's agreement to deferred funding of the past-service liability over an extended amortization period is commonly the quid pro quo for the employer's agreement to increase the level of pension benefits (A-24).

agreements covering employees at the Hopkins and Minneapolis (Lake Street) plants for the period May 1, 1971 to May 1, 1974. Those agreements incorporated the "Pension Agreement and Plan" (hereinafter the "Plan"), as amended by the 1971 collective bargaining negotiations. The Plan adopted in these 1971 negotiations provided, in language unchanged since the original pension plan established in 1950 collective bargaining, as follows:

> Section 6.09—Source of Pensions.
>
> Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund (A-155).
>
> * * * * *
>
> Section 6.17—No Other Benefits.
>
> No benefits other than those above specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein (A-165).
>
> * * * * *
>
> Section 9.04—Rights of Employees in the Fund.
>
> * * * All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan, and neither the Company nor any Trustee nor any Pension Committee or member thereof shall be liable therefor in any manner or to any extent (A-168).

During the 1968 and 1971 collective bargaining negotiations, White and the UAW contracted for certain Pension Guarantees applicable to the Hopkins plant and the Minneapolis (Lake Street) plant in the event of plant

closing and termination of the Plan (A-27).[6] By the pension guarantee negotiated with the UAW in 1971 but signed on March 3, 1972, White assumed, in addition to its funding obligations under the Plan, direct liability for pension payments amounting to $7,000,000 above the assets of the Fund (A-27).

The UAW insisted on the Pension Guarantee because it recognized that the capacity of the Pension Plan to provide pension protection for employees and retirees in the event of termination of the Plan was limited by the amount available in the pension fund and that termination of the Plan when the funding schedule had not been completed would result in loss of pensions (A-26-27). In fact, the 1971 pension guarantee which was signed in March, 1972, recited that "[d]uring the contract negotiations, the Union proposed and the Company agreed to guarantee retirement benefits [at an agreed level] under the Pension Plan in the event there should be a closing of the Minneapolis-Moline Plants at Lake Street, Minneapolis and Hopkins, Minnesota and a resulting termination of the

6. Footnote 33 on page 12 of the State's brief is inaccurate. The record clearly shows that the pension guarantee was granted by White in response to insistence by the UAW during the 1968 and 1971 collective bargaining negotiations (A-27). In fact, the District Court found:

> "During the 1968 and 1971 negotiations with UAW, Pension Guarantees applicable to the Lake Street and Hopkins plants were given by White Motor. These Guarantees provided that, upon termination of the pension plan, benefits were guaranteed by White Motor at a designated benefit level. By giving the Guarantees, White Motor assumed a direct liability of approximately $7,000,000." (A-91).

This finding was accepted by the Court of Appeals (A-114-115). That White and the UAW regarded the Pension Guarantee as a contractual commitment arrived at through collective bargaining is clear from the arbitration proceedings arising out of White's attempt to terminate the Pension Plan in 1972. *White Motor Corp. and UAW*, 61 Lab. Arb. 320, 329-331 (1973) (Seitz, Arbitrator).

Plan." (A-172). The 1968 pension guarantee contained a similar recital (A-171).

After suffering losses at the White Farm division in excess of $21,000,000 in the three years from 1969 through 1971, White early in 1972 informed the UAW of its intention to close the Minneapolis (Lake Street) and Hopkins plants (A-27). As a result of subsequent negotiations, the Hopkins plant has continued to operate,[7] but operations at the Minneapolis (Lake Street) plant were terminated in June of 1972 (A-27). Relying on Section 10.2 of the Plan, which expressly provided that the employer had the right to terminate the Plan at any time, White on June 30, 1972, acted to terminate the Plan. Arbitration followed, and an award adverse to White was entered and subsequently confirmed in court proceedings. The arbitrator ruled that the Plan could not be effectively terminated until May 1, 1974, the expiration date of the collective bargaining agreement then in effect (A-27-28). Thereafter, White took action again to terminate the Plan on May 1, 1974, and the Plan terminated on that date (A-28). As recognized by the State (DB 13-14), White continued to pay pensions in full from the pension fund until March 1976, when the assets of the fund were exhausted, and has since paid pensions from its own funds at the levels set out in its pension guarantee agreement with the UAW.

After the initial attempt by White to terminate the Plan and just twenty days before the Plan's termination on May 1, 1974, the Minnesota Legislature, on April 10, 1974, enacted the Minnesota Pension Act which was signed that day by the governor in a public ceremony at the site of White's then demolished Lake Street plant (A-28).

7. By later agreement between White and the UAW, a new pension plan is in effect at the Hopkins plant (A-111, n.5).

Sections 181B.03-.06 of that Act impose a "pension funding charge" directly on employers. Irrespective of contrary terms of any pension plan, those sections provide that, upon termination of a pension plan, any employee with ten years of credited service shall have a vested right to specified pension benefits computed in accordance with the statute. That right is enforceable directly against the employer rather than against the pension fund to which the employer has contributed. Sections 181B.09-.12 of the Minnesota Pension Act provide that the Commissioner of Labor and Industry, the appellant herein, shall certify amounts owing by an employer under that Act, which amounts are declared to "be a lien upon the employer's assets." Payment is to be made through the employer's purchase of prepaid deferred annuities for each employee to whom there is found to be liability (A-132, *et seq.*).

The Minnesota Pension Act conflicts with the White-UAW Pension Plan in a number of material respects, including the following:

(1) The Minnesota Pension Act gives employees vested rights to pension benefits under circumstances where the Plan does not. The Minnesota Pension Act makes employees who have ten years of credited service eligible for pension benefits, whereas the Plan requires ten years of credited service and attainment of age forty. *Compare* Sections 181B.03-.06 of the Minnesota Pension Act *with* Sections 6.03(a), 6.17 and 9.04 of the Plan.

(2) The Minnesota Pension Act imposes pension liability directly upon the employer and requires satisfaction of pension benefits from the general funds of the employer, while the Plan provides that pension benefits may be satisfied only from a specific pension fund, with the employer's responsibility for making contributions to such pension fund being limited by the Plan. *Compare* Sections 181B.03-.06 of the Minnesota Pension Act *with* Sections 6.09 and 9.04 of the Plan.

After the Commissioner of Labor and Industry had asserted his intention to enforce the Minnesota Pension Act against White, and had taken steps to do so, this action was filed on May 15, 1975. In an amended complaint filed on July 24, 1975, White asserted that the Minnesota Pension Act was in unconstitutional conflict with federal labor law and therefore preempted. White also asserted that the Minnesota Pension Act is unconstitutional on a number of other grounds (A-4, *et seq.*). The other constitutional questions have not been considered by the District Court and are not at issue here.

On August 18, 1975, the Commissioner notified White that he was assessing against it a pension funding charge of $19,150,053 under the Minnesota Pension Act (A-31). White promptly filed motions for summary judgment or for a preliminary injunction on the sole ground that federal labor law preempted the Minnesota Pension Act. The District Court denied White's motions because of its determination that the Minnesota Pension Act was not preempted.

White appealed from the order of the District Court denying the motion for a preliminary injunction. The Court of Appeals reversed. The State appealed.

SUMMARY OF ARGUMENT

The Minnesota Pension Act is in direct conflict with pension agreements negotiated by White with the UAW prior to enactment of that statute. Enforcement of that Act would prevent White from carrying out the terms of those agreements and would impose upon White massive obligations in conflict with limitations of pension liability which White had negotiated with the UAW.

The National Labor Relations Act (NLRA) requires employers and unions to bargain collectively on wages, hours, and other terms and conditions of employment, including pensions. Federal labor law protects both the bargaining process and agreements which are the product of such bargaining. The collective bargaining and contracts in this case are actually, not just arguably, protected by federal labor law. In *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), this Court held that the NLRA preempts state statutes which interfere with the enforcement of a collective bargaining agreement by changing or nullifying the terms of that agreement which relate to mandatory subjects of bargaining. The Court reasoned that a state statute cannot be applied to "frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving * * *" 358 U.S. at 296.

Oliver followed two earlier decisions of this Court that contained similar holdings based on the Railway Labor Act. In *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956) and *California v. Taylor*, 353 U.S. 553 (1957), this Court announced that collective bargaining agreements made under the authority of federal labor law have the imprimatur of such law upon them and cannot be nullified by state laws. These principles were expressly re-

affirmed by this Court in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 153 (1976), and are fully applicable here.

State regulation of employment relationships is not exempt from the principle of labor law preemption as an exercise of police power unless the state action falls within the narrow and limited exceptions to labor law preemption. These exceptions cover only (a) matters of peripheral concern of federal labor law and (b) conduct which involves interests deeply rooted in local concern. Neither of these exceptions is applicable here. Bargaining over an important fringe benefit such as pensions is critical to the bargaining process. A state statute which materially changes substantive pension plan provisions is a direct, not a peripheral, interference with a right protected by federal labor law. The second exception has been applied to permit states to police "actual or threatened violence to persons or destruction of property," *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 136 (1976); those state objectives are clearly not involved in this case.

The attempt of the State and the Solicitor General to expand the local interests exception to include economic welfare and general well-being of its citizens is unsupported by any authority and, if adopted, would wipe out federal labor law protection for the collective bargaining process and collective bargaining agreements.

The Welfare and Pension Plans Disclosure Act (Pension Disclosure Act) does not save the Minnesota Pension Act from the preemptive effect of federal labor law. Prior to the Pension Disclosure Act, states had no power to control substantive terms of pension plans negotiated under the umbrella of federal labor law. The Act did not cede

any such power to the states but rather left to the states their traditional power to police the operation and administration of trusts and insurance funds. The legislative history of the Pension Disclosure Act confirms that Congress did not intend to save state legislation like the Minnesota Pension Act. ERISA was enacted after the Minnesota Pension Act and after the operative facts giving rise to this lawsuit. It has no bearing on the question presented and furthermore does not indicate that the Minnesota Pension Act is relieved from the effect of the preemption principle.

ARGUMENT

I. The Minnesota Pension Act Is in Conflict With the Pension Agreements Negotiated by White and the Union Representing Its Employees. Enforcement of This State Legislation Would Interfere With Collective Bargaining, and Would Preclude the Fulfillment of Collective Bargaining Agreements Entered Into Prior to Enactment of the State Law.

In the 1971 collective bargaining negotiations, White and the UAW entered into agreements on wages and fringe benefits. These agreements increased the level of pension benefits and, as a quid pro quo, lengthened the amortization period for past service liability to 35 years. Additionally, in response to a UAW demand, White entered into an agreement to guarantee pension benefits at certain prescribed levels if the pension plan were terminated and the assets of the pension fund exhausted, thereby assuming an additional liability of $7,000,000. In return for these commitments, prior provisions of the pension plan making pensions payable only from the fund and protecting the Com-

pany from liability for the payment of pensions were continued in effect.[8]

These agreements were entered into between White and the UAW, a knowledgeable and experienced union representing White's employees. White has met and is continuing to meet its contractual pension obligations under its Minnesota agreements with the UAW. The Minnesota Pension Act has the effect of destroying these pension agreements. It does so in at least the following ways:

(1) It dictates eligibility requirements different from those agreed to by White and the UAW and incorporated into the Plan;

(2) It provides for direct liability of White for pensions, destroying the Plan's provision for sole recourse against the pension fund;

(3) It renders meaningless White's Guarantee Letter, thereby wiping out a collectively bargained solution of a problem facing the union, the company and the employees. White's commitment of $7,000,000 to reach that solution is superseded by the Minnesota Pension Act, which requires an immediate satisfaction of a pension funding charge in excess of $19,000,000.

The State would dispose of this massive conflict by referring to the conflict as "peripheral contact" (DB 18).

The conflicts between the negotiated pension plan and the Minnesota Pension Act were described by the Court of Appeals as follows:

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8. These contractual limitations upon pension liability of the employer were put into the plan in 1950, before the retirement of any employees under the plan. See p. 21, *infra*.

The Minnesota Pension Act obligations conflict with White Motor's pension plan provisions in the following respects: (1) the Act grants employees vested rights to pension benefits which are not available under the pension plan; (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general assets of the employer, while the pension plan provides that benefits shall be paid only out of the pension fund; and (3) the Act does not permit employers to escape liability for funding of pension rights, but the pension plan permits White Motor to terminate the plan at any time, and in so doing end any liability for future payments to the pension fund, save those specifically guaranteed. Thus, essential features of the pension plan, deferred funding of past service liability coupled with limited employer liability and the power to terminate, were negated by the Pension Act. (A-115); 545 F.2d at 603.

The State seeks to minimize the importance of the direct conflict between the Minnesota Pension Act and White's negotiated pension plan by repeated reference to the bargaining *process*. In essence, the State appears to argue that since the Minnesota Pension Act was not in effect at the time the labor contracts providing pensions for White employees were negotiated, the Act did not interfere with the bargaining process. The thrust of such an argument is simply a claim that if a state waits until a collective bargaining agreement has been negotiated and is in effect, the state is then free to enact legislation, under the guise of public welfare, which would modify the collective bargaining agreement by nullifying contractual limitations upon liability. Such action constitutes direct

interference not only with the negotiated contract but with the bargaining process.

It is difficult to imagine a more devastating effect upon the bargaining process than that which would result from knowledge of the parties that *after* their agreement has become effective, a state could either (a) impose on the employer massive fringe benefit obligations in addition to those agreed upon in collective bargaining, or (b), as noted by the Court of Appeals, "take away from working people contract benefits obtained through hard, fair bargaining" (A-130).

Moreover, the Minnesota Pension Act did actually interfere with collective bargaining between White and the UAW after its passage. When the 1971 collective bargaining agreements expired in 1974, White and the UAW bargained on new contracts at the Hopkins plant, including a pension plan. By the Minnesota Pension Act, the State made itself an integral part of that bargaining and restricted the ability of the parties to reach their own agreement (A-29-30).

The facts establish that a sharp and massive conflict exists between the Minnesota Pension Act and the pre-existing provisions of the White-UAW pension agreements and that such conflict interferes with collective bargaining and nullifies material portions of collective bargaining agreements.

We can now consider the legal effect of the conflict.

II. State Laws Interfering With Collective Bargaining and Preventing the Performance of Substantive Provisions of Collective Bargaining Agreements Negotiated Under the Authority of the National Labor Relations Act Are Preempted Under the Supremacy Clause of the United States Constitution.

The goal of federal labor policy is the promotion of collective bargaining. The National Labor Relations Act requires that employers and unions bargain collectively with respect to wages, hours, and other terms and conditions of employment and embody their agreements in written contracts. Federal labor law thus protects not only the process of collective bargaining but the substantive terms of the agreement which is the product of that bargaining. The Court of Appeals in its decision below so held:

> If states cannot control the economic weapons of the parties at the bargaining table, *a fortiori*, they may not directly control the substantive terms of the contract which results from that bargaining. (A-122); 545 F.2d at 606.

This Court has long recognized that principle.

In *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956), the Court held that, by force of the Supremacy Clause of Article VI of the Constitution, a collective bargaining agreement negotiated under federal labor law (in that case the Railway Labor Act) could not be vitiated by the laws of a state. The next year, the Court decided *California v. Taylor*, 353 U.S. 553 (1957). In that case the State of California argued, much like the Solicitor General argues in his brief in this case, that "Congress has no constitutional power to interfere with the 'sovereign

right' of a State to control its employment relationships on a state-owned railroad engaged in interstate commerce" 353 U.S. at 568. It was the position of California that wages and working conditions of employees on the state-owned railroad were governed by California civil service laws rather than by the terms of a collective bargaining agreement reached under federal labor law. This Court held that such a claimed state right could not stand against the provisions of the Railway Labor Act.

In 1959 this Court decided *Local 24, Teamsters v. Oliver*, 358 U.S. 283, a case of particular importance to this case. The Supreme Court of Ohio had applied a pre-existing Ohio antitrust statute to prevent the operation of wage agreements reached in a collective bargaining contract entered into under the mandate of the National Labor Relations Act. This Court, relying on its holdings in *Hanson* and *Taylor*, reversed, stating:

> To allow the application of the Ohio antitrust law here would wholly defeat the full realization of the congressional purpose. The application would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here * * * * We believe that there is no room in this scheme for the application here of this state policy limiting the solutions that the parties' agreement can provide to the problems of wages and working conditions [citations omitted]. Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State [citations omitted]. The solution worked out by the parties was not one of a sort which Congress has indicated may be left

> to prohibition by the several States [citations omitted]. Of course, the paramount force of the federal law remains even though it is expressed in the details of a contract federal law empowers the parties to make, rather than in terms in an enactment of Congress. 358 U.S. at 295-97.

That holding is applicable to the pension agreements entered into between White and the UAW, since pensions are a mandatory subject of bargaining under the National Labor Relations Act. *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960 (1949).

The *Oliver* holding is simple and easy to apply and it applies directly to this case. The State and the Solicitor General have attempted to distinguish *Oliver* on a variety of grounds, none of which has any merit.

The State (DB 20-21) and the Solicitor General (SGB 18-19)[9] argue that *Oliver* is inapplicable because the Ohio act prohibited bargaining on a mandatory bargaining subject. The same can be said of the Minnesota Pension Act since employers and unions are prohibited from negotiating and agreeing upon contract terms in conflict with the Minnesota Pension Act. The question in *Oliver* was whether a state law "may be applied to prevent the contracting parties from carrying out their agreement upon a subject matter as to which federal law directs them to bargain." 358 U.S. at 295. That is precisely the question here. In other words, can the Minnesota Pension Act be applied to prevent the application of the White-UAW collective bargaining agreements expressly defining vesting rights and limiting White's pension funding liability?

9. References to the Solicitor General's Brief are noted as "SGB ......".

In fact, the Minnesota statute here presents a clearer case for application of labor law preemption than did *Oliver*. In *Oliver* the statute preempted was a state antitrust statute[10] which had been in effect for many years. Arguably, parties affected thereby would have the opportunity in collective bargaining to avoid or lessen the impact of the statute. In this case, the state law was enacted after White-UAW agreements had been in effect for several years. White and the UAW had no opportunity to consider in their negotiations the impact of any such legislation. If states cannot control the actions of parties at the bargaining table by statutes passed before collective bargaining begins, *a fortiori*, they cannot nullify the substantive terms of collective bargaining agreements by a state law enacted after the agreements became effective.

The State suggests (DB 18) that the Minnesota Pension Act comes into play only upon cessation of employ-

10. *Oliver* held that the potential for impairing the federal regulatory scheme was not lessened by the fact that the Ohio antitrust act was a law of general application (DB 20, n.42). In *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959), the Court said:

> Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed towards the governance of industrial relations [footnote omitted]. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes. 359 U.S. at 244.

See also *Farmer v. Carpenters*, 430 U.S. 290, 300 (1977). Thus, it makes no difference here whether the Minnesota Pension Act can be considered a statute of general application. That Act was passed after both houses of Congress had passed versions of ERISA, thereby assuring early passage of a federal law and self-destruction of the Minnesota Act (§181B.17). That fact, and the ceremonial signing of the Act at the White plant site, cause one to wonder as to the intended application of the Act.

ment or termination of a pension plan and, therefore, does not impinge upon mandatory subjects of bargaining. This contention ignores realities. An employer entering into a collective bargaining agreement must consider the ultimate cost of the contract provisions he agrees to. It is for this reason that the White-UAW Pension Plan contained provisions limiting White's liability upon termination of the plan. Any state statute which purports to enlarge the employer's ultimate financial obligation beyond that which was negotiated clearly impinges upon collective bargaining.

Moreover, the State's assertion is legally incorrect. In the context of an on-going collective bargaining relationship, the *termination* of a pension plan is a mandatory subject of collective bargaining. Furthermore, it is a well established rule that employers must bargain on the impact of a business decision to close a plant or take other action materially affecting employment in a plant. *Royal Typewriter Co. v. NLRB*, 533 F.2d 1030 at 1039 (8th Cir. 1976). Under certain circumstances, the employer may even be required to bargain concerning the business decision itself. *Fibreboard Corp. v. NLRB*, 379 U.S. 203, (1964). In this case, such bargaining resulted in the continued operation of the Hopkins plant.

The State also argues (DB 22, n.45) that the principles of *Oliver* and its progenitors are not applicable here since the pension agreements cover retirees, and are not, therefore, agreements on a mandatory subject of collective bargaining, citing *Allied Chem. & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). The State's position is factually inaccurate and legally unsupported. The first pension plan covering employees at the Minneapolis and Hopkins plants was established in 1950 through collective bargaining. In subsequent collective bargaining agreements the pension plan was repeatedly

amended, the last amendment prior to enactment of the Minnesota Pension Act taking place in the 1971 collective bargaining negotiations. As previously noted, the pension plan, since its original adoption in 1950, has at all times provided that pensions were payable only from the pension fund and that the Company was not liable for the payment of pensions. *Every* retiree who is now receiving a pension retired under the terms of a pension agreement containing such a provision. The fact that bargaining on pensions for employees incidentally impacts on retirees does not alter the mandatory nature of bargaining.

The State next contends that *Oliver* is applicable only to conflicts between federal labor law and state antitrust law (DB 22-24). There is no support for such a restrictive reading of *Oliver*. In the first place, *Oliver* simply applied to the National Labor Relations Act the principles announced in *Hanson* and *Taylor*, decided under the Railway Labor Act. Those progenitors of *Oliver* did not deal with antitrust laws.

Furthermore, subsequent decisions of this Court recognize *Oliver* as a holding of general application on labor law preemption. Thus, in *NLRB v. Insurance Agents*, 361 U.S. 477 (1960), the Court, citing *Oliver*, recognized that "Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences." 361 U.S. at 488.[11] The vitality and breadth of *Oliver* were again recognized in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), by the following statement:

11. See also Cox, *Labor Law Preemption Revisited*, 85 HARV. L. REV. 1337, 1352 (1972).

Our decisions since *Briggs-Stratton* have made it abundantly clear that state attempts to influence the substantive terms of collective-bargaining agreements are as inconsistent with the federal regulatory scheme as are such attempts by the NLRB: "Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State." *Teamsters Union v. Oliver*, 358 U.S. 283, 296 (1959). 427 U.S. at 153.

The State (DB 25-26) claims support for its position can be found in the 5 to 4 *en banc* decision in *Amalgamated Transit Union v. Byrne*, 96 LRRM 2440 (3rd Cir. 1977). In that case the Third Circuit majority held that threats by officials of New Jersey to withdraw state subsidies to private transportation companies which agreed to include unlimited cost of living clauses in their collective bargaining agreements were not preempted by federal labor law. The decision, whether correct or not, does not support the State's position here.

At the outset the court in *Byrne* distinguished an attempt to influence private conduct by the withdrawal of subsidies from direct state regulation of private conduct. By this distinction, the court found that decisions of this Court on labor law preemption were not controlling. The court majority said:

> Moreover, Supreme Court cases on preemption in the labor field do not seem precisely on point here because they have apparently all involved direct state regulation of private conduct, whereas in the present case New Jersey has not directly commanded or prohibited the conduct of third parties but has merely sought to influence private conduct by threatening to withhold discretionary subsidies. 96 LRRM at 2442.
>
> * * * * *
>
> * * * we do not believe that New Jersey's action here constitutes the *governmental* attempt to dictate the substance of collective bargaining agreements which is forbidden by *NLRB v. Insurance Agents, supra*, and other cases. 96 LRRM at 2444.

In this case the State of Minnesota has directly commanded the conduct of third parties in direct conflict with agreements protected by federal labor law.

Indeed, the *Byrne* court distinguished its case from one which, like the present case, would be clearly preempted under *Oliver*:

> * * * It cannot be doubted that New Jersey would be barred under the Supremacy Clause from prohibiting private parties from agreeing to unlimited cost of living clauses in their collective bargaining agreements. 96 LRRM at 2443.

III. No Exception to the Labor Law Preemption Principle Is Applicable Here.

In dealing with the preemption issue in this case, the Court is not writing on a clean slate. The Court has recognized, in the face of claims of a state's right to act for the welfare of its citizens, that "Congress knew full well that its labor legislation 'preempts the field that the act covers insofar as commerce within the meaning of the act is concerned' * * *", *Bus Employees v. Wisconsin Employment Relations Board*, 340 U.S. 383, 397-8 (1951).

Before discussing the recognized exceptions to federal labor law preemption, comment should be made concerning

the astounding proposition that, by reason of the magic words, "police power", state laws relating to the "welfare", "well-being" or "economic security" of citizens are somehow excepted from labor law preemption, even if they are in conflict with conduct protected by federal labor law (SGB 9-10, 12; DB 43-44). If states had "police power" to dictate changes in collective bargaining agreements, unaffected by the imprimatur which federal law places on such agreements, the labor law preemption principle would be undermined and destroyed.

The police power argument asserted by the Solicitor General and the State has been rejected again and again by this Court, as illustrated by the following cases.

In *Erie R.R. Co. v. New York*, 233 U.S. 671 (1914), the Court held that a New York statute setting lower maximum hours of work for railroad telegraph operators than the maximum hours permitted by the federal Hours of Service Act, being in conflict with federal law, could not be upheld as an exercise of the state's police power. The Court said:

> [W]e considered it elementary that the police power of the State could only exist from the silence of Congress upon the subject and ceased when Congress acted or manifested its purpose to call into play its exclusive power. 233 U.S. at 682.

In *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956), the Court expressly held that the police power of the state to prohibit a union shop existed only "[i]n the absence of conflicting federal legislation" and that the Railway Labor Act eliminated that police power. 351 U.S. at 233. See also *California v. Taylor*, 353 U.S. 553, 568 (1957), discussed *supra* at pp. 16-17.

The only judicial support cited by the Solicitor General for his "police power" argument is a quotation (SGB 10-11)

from the opinion in *De Canas v. Bica*, 424 U.S. 351 (1976). While that quotation referred to the police power of states to regulate the employment relationship, the case did not involve labor law preemption but dealt, rather, with a claim that a California statute regulating the employment of illegal aliens was preempted by the Immigration and Nationality Act, 8 U.S.C. §1101 (INA). Two comments will serve to distinguish the case. (1) The Court recognized, 424 U.S. at 359, n.7, that "nothing remotely resembling the NLRA scheme" of "national uniformity of regulation" was to be found in the INA. (2) The Court noted, 424 U.S. at 361-2, that federal legislation had expressly approved state legislation regulating employment of illegal aliens and that federal legislation was intended to supplement such state legislation.

That *De Canas* does not affect the principles of labor law preemption is shown by the fact that later in the same term this Court decided *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), a major labor law preemption case, without even citing *De Canas*. *Machinists* expressly reaffirmed *Oliver*, the case upon which the Eighth Circuit's opinion is based.

The Solicitor General, in an attempt to shore up his police power argument, now claims that, at least, state legislation establishing "minimum standards" on subjects which affect the welfare of citizens is excepted from preemption. (SGB 9-10, 19-20). There is no support for this transparent attempt to avoid the impact of *Oliver*. Regulation by a state which interferes with collective bargaining and the performance of labor agreements is not permitted simply because the interference is labeled the establishment of minimum standards. As this Court has said, "Congress intended that the parties [to collective bargaining negotiations] should have wide latitude in their negotiations, un-

restricted by *any governmental power to regulate the substantive solution of their differences*". *NLRB v. Insurance Agents*, 361 U.S. 477, 488 (1960). (Emphasis supplied). The Court recently added that "state court jurisdiction cannot be permitted where there is a realistic threat of interference with the federal regulatory scheme". *Farmer v. Carpenters*, 430 U.S. 290, 305 (1977). The threat of interference is not removed by calling the interference "minimum standards". Moreover, the Minnesota Pension Act does not set minimum standards but fundamentally restructures the liability rules of an employer under his pension agreement. Thus, there is no minimum term of funding provided when the Minnesota Pension Act comes into play; instead the Act eliminates deferred funding altogether in the event of a plant closing or plan termination.

While there are exceptions to federal labor law preemption, such exceptions are very narrow and limited. As stated in *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959), state regulation is permitted only where the activity regulated is a "merely peripheral concern" of federal labor law, or where the regulated conduct concerns interests "deeply rooted in local feeling and responsibility." 359 U.S. at 243-244. The scope of these exceptions is discussed in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), at 136-8.

As previously noted, the first exception is clearly inapplicable to the subject of collective bargaining on pension obligations, because bargaining over such a major bargaining issue is critical, not peripheral, to the collective bargaining process. A state statute which modifies and nullifies pension provisions in a collective bargaining agreement is a direct, not a peripheral, interference with a right actually, not just arguably, protected by federal labor law.

The second exception, as decribed in *Garmon*, relates to state regulation of conduct which involves "interests so deeply rooted in local feeling and responsibility that . . . we could not infer that Congress had deprived the States of the power to act". 359 U.S. at 244. This second exception, according to *Machinists*, has been applied to "[p]olicing of actual or threatened violence to persons or destruction of property". 427 U.S. at 136.

In *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), this Court, in holding that states could not interfere with the substantive terms of wage agreements established by collective bargaining, recognized that it did not have before it "a case of a collective bargaining agreement in conflict with a local health or safety regulation." 358 U.S. at 297. The reference, of course, was to the exception described later in that term in *Garmon* as the "local interests" exception.

The Solicitor General seeks to expand this exception to a "health, safety, *economic security and welfare* exception" (SGB 9-10, 12). The State, both in the District Court and in the Court of Appeals, argued that the "local health or safety regulation" referred to in *Oliver* applied to the Minnesota Pension Act since that legislation affected "economic welfare". This argument was rejected by both the District Court and the Court of Appeals. Although the argument was not advanced in the Jurisdictional Statement, the State in its brief on the merits (DB 40, 43-44) joins the Solicitor General in asserting that any state law affecting the "economic welfare" or "well-being" of its citizens is exempt from preemption as a "health or safety" regulation. There is no support for such an argument.

Pensions have been held to be "wages" and "other terms and conditions of employment" as those terms are

defined in the National Labor Relations Act. It is common knowledge that wage increases may be granted in lieu of an increase in fringe benefits such as pensions, paid vacations, and paid holidays; or that one fringe benefit may be given in lieu of another fringe benefit or of a larger wage increase. Clearly wages, pensions, vacation pay, holiday pay and other contract provisions are all part of the economic package negotiated in collective bargaining agreements. Each element of that package, of course, has an effect on the economic welfare of employees. See *Craig v. Bemis Company, Inc.*, 517 F.2d 677, 684 (5th Cir. 1975).

If the "health or safety" exception to preemption were considered broad enough to include an employee's economic welfare, virtually the whole range of mandatory subjects for collective bargaining would be subject to state interference and control. The exception would then engulf the rule. As stated by Mr. Justice Cardozo in *Baldwin v. G.A.F. Seelig*, 294 U.S. 511, 522-23 (1935), where this Court rejected a claim of the state of New York that it was protecting the health of its citizens in establishing minimum prices for out-of-state milk sold in New York:

> This would be to eat up the rule under the guise of an exception. Economic welfare is always related to health, for there can be no health if men are starving. Let such an exception be admitted, and all that a state will have to do in times of stress and strain is to say that its farmers and merchants and workmen must be protected against competition from without, lest they go upon the poor relief lists or perish altogether. 294 U.S. at 523. (Citations omitted).

If legislation affecting economic welfare of individuals were exempt from federal labor law preemption, the

Oliver Court would have held state antitrust laws, which materially affect the economic welfare of citizens, to be exempt from federal labor law preemption.

Where state legislation is in direct conflict with a right clearly protected under the National Labor Relations Act, such as the right to strike peacefully or the right to enforce the terms of an agreement negotiated under federal law, this Court has consistently held such legislation preempted even where it affected the welfare or, in a broad sense, the health and safety of the citizens of a state. In *Bus Employees v. Wisconsin Employment Relations Board*, 340 U.S. 383 (1951), the Court held that federal labor law preempted a Wisconsin statute prohibiting strikes in "essential public utility service", 340 U.S. at 388, even though the interruption of that service would clearly impact upon the welfare and, indeed, upon the health and safety of the citizens of the community. The Wisconsin Supreme Court, in upholding the statute, had stressed the importance of utility service to the public welfare. 340 U.S. at 388. Notwithstanding that finding, this Court held that the Wisconsin statute was preempted.

In *Bus Employees v. Missouri*, 374 U.S. 74 (1963), the Court reaffirmed its holding in the *Wisconsin Board* case. There, upon a strike by public transit employees, the Governor of Missouri, acting under authority granted him by a state statute, issued a proclamation "that the public interest, health and welfare were jeopardized by the threatened interruption" of service and, by executive order, took possession of the facilities of the transit company. 374 U.S. at 76. The Missouri statute in question defined certain public utilities as "life essentials of the people" and declared that the prospect of strikes in such utilities was "a threat to the welfare and health of the people".

374 U.S. at 78. This Court, in holding the statute preempted, did not question the finding of a threat to health and welfare and, in fact, found it unnecessary to comment on the finding. Instead, the Court said:

> In forbidding a strike against an employer covered by the National Labor Relations Act, Missouri has forbidden the exercise of rights explicitly protected by §7 of that Act. Collective bargaining, with the right to strike at its core, is the essence of the federal scheme. As in *Wisconsin Board*, a state law which denies that right cannot stand under the Supremacy Clause of the Constitution. 374 U.S. at 82.

The Court noted that its holding did not affect the right of a state "to deal with emergency conditions of public danger, violence, or disaster . . ." 374 U.S. at 83, referring, obviously, to the "local interests" exception to preemption.

These authorities demonstrate that the so-called "health or safety" exception to preemption is extremely limited. See also *United Air Lines, Inc. v. Industrial Welfare Commission*, 211 Cal. App. 2d 729, 28 Cal. Reptr. 238 (1963), reviewing in detail the authorities on the subject and holding that state regulation of wages and fringe benefits is not exempt from labor law preemption as a local health or safety regulation.

Farmer v. Carpenters, 430 U.S. 290 (1977), does not support the State's position. In *Farmer*, as in *Linn v. Plant Guard Workers*, 383 U.S. 53 (1966), the prosecution of a state court civil action against a union for damages resulting from "outrageous conduct" intentionally carried on to damage an individual in his reputation and property was held to be permissible. What the State fails to note (DB 40, 43) is the holding of this Court that such out-

rageous conduct is not an activity protected by federal labor law. Therefore, prosecution of a state court suit will not result in state regulation of conduct that Congress intended to protect under federal labor law. 430 U.S. at 298, 302. By contrast, the White-UAW pension agreements are clearly protected by federal labor law, as this Court has made clear in *Oliver*, *Hanson*, *Taylor* and other cases. Moreover, the state action permitted in *Farmer* had little potential for interference with the federal scheme. 430 U.S. at 304-6.

In *Farmer* the Court carefully noted that the "peripheral concern" and "local interests" exceptions to federal labor law preemption "in no way undermine the vitality of the pre-emption rule," 430 U.S. at 297, and that "state court jurisdiction cannot be permitted where there is a realistic threat of interference with the federal regulatory scheme". 430 U.S. at 305. State legislative activity is equally impermissible. The decision in *Farmer* fully supports the judgment of the Court of Appeals in this case.[12]

The attempt to treat the Minnesota Pension Act as a health or safety regulation exempt from labor law preemption is unsound and is unsupported.

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12. The State (DB 41-44) now chooses to rely upon cases upholding the grant by some states of welfare benefits and unemployment compensation to striking employees against claims that such state action was preempted. The decisions which the State cites held either (i) that the impact of such state action on collective bargaining is so insubstantial as to be a matter of merely peripheral concern of federal labor law or (ii) that Congress had made it clear that this was a matter it intended to leave to the states. Relevant legislative history is reviewed in detail in *N.Y. Telephone Co. v. N.Y. Dept. of Labor*, 96 LRRM 2921 (2nd Cir. Nov. 9, 1977). We need not discuss here whether these decisions on payment of benefits to strikers are correct. Suffice it to say that the impact of the Minnesota Pension Act on the White-UAW pension agreements is direct and substantial, not tangential. There is, of course, no congressional approval of such state action.

IV. Congress Did Not, by the Welfare and Pension Plans Disclosure Act or Otherwise, Leave to the States Authority to Enact Legislation Modifying or Nullifying Pension Terms in Collective Bargaining Agreements.

Defendant and the Solicitor General claim that Congress, in enacting the Welfare and Pension Plans Disclosure Act in 1958, 29 U.S.C. §§301, *et seq.* (hereinafter the "Pension Disclosure Act"), clearly indicated its intention to leave to the states power to enact legislation modifying and nullifying the pension provisions of collective bargaining agreements. That argument suffers from the same weakness inherent in their arguments for a broad police power exemption and for expansion of the local interests exception to protect all state laws dealing with economic welfare or well-being of citizens. The common weakness is that each proposition proves too much—each would destroy federal labor law preemption.

The State and the Solicitor General reluctantly admit that the Pension Disclosure Act did not affirmatively grant any power to the states, but only "left to" the states power they already had (DB 32; SGB 12-16). The savings clause of the Pension Disclosure Act relied on by the State compels such a reading:

> The provisions of this chapter * * * shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration * * * of any such plan contrary to any such law. 29 U.S.C. §309(b).

The Solicitor General and the State erroneously assume that, before the Pension Disclosure Act was passed in 1958, states had the power to interfere with collectively bargained pension plans. But by 1958 both the Railway Labor Act and the NLRA had been in effect for many years and this Court had developed the labor law preemption principle. In 1956, this Court, in *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956), held that "[a] union agreement made pursuant to the Railway Labor Act * * * could not be made illegal or vitiated by any provision of the laws of a State." 351 U.S. at 232. The Court reaffirmed that holding in *California v. Taylor*, 353 U.S. 553 (1957). *Local 24, Teamsters v. Oliver*, 358 U.S. 283, decided in 1959, simply applied to the National Labor Relations Act the labor preemption principle enunciated in *Hanson*, and held that "the paramount force of the federal law remains even though it is expressed in the details of a contract federal law empowers the parties to make". 358 U.S. at 296-97.

Thus, prior to the Pension Disclosure Act, states had no more power to regulate the substantive provisions of negotiated pension plans than they had to regulate other substantive provisions of collective bargaining agreements, such as the amount of paid vacations for employees, the number of paid holidays, the terms under which leaves of absence would be granted, or the rules governing lay-off or discharge of employees. This argument of the State and the Solicitor General has no more validity than does their argument that by use of the police power or a general welfare exception to the preemption principle states can regulate substantive terms of collective bargaining agreements. States have not been and cannot be permitted to so undermine the preemption principle.

Therefore, at the time the Pension Disclosure Act was enacted, state laws regulating substantive terms of collectively bargained employment relationships could only avoid the then existing doctrine of federal preemption by a clear grant from Congress of a right to interfere directly with collective bargaining and collective bargaining agreements. Congress had demonstrated its capacity to make such a clear and explicit grant of regulatory power to the states in the labor field when in fact it intended to do so. The NLRA itself contains many provisions which explicitly sanction state regulation in specific areas. *See*, for example, sections 10(a), 29 U.S.C. §160(a) (authorizing the National Labor Relations Board to cede jurisdiction to state labor relations agencies), 14(b), 29 U.S.C. §164(b) (authorizing state right-to-work laws), and 14(c)(2), 29 U.S.C. §164(c)(2) (authorizing the NLRB to cede certain jurisdiction to states). And this Court has made it clear that claimed exceptions to preemption in the area of labor law must be clear to be recognized. In *Bus Employees v. Wisconsin Employment Relations Board*, 340 U.S. 383, 397-8 (1951), the Court, in holding preempted a state statute prohibiting strikes in utilities furnishing esssential services to the public, said:

> * * * Congress [has] demonstrated that it knew how to cede jurisdiction to the states. Congress knew full well that its labor legislation "preempts the field that the act covers insofar as commerce within the meaning of the act is concerned" and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative. (Footnotes omitted.)

The State and the Solicitor General ignore this very relevant pronouncement. See also *California v. Taylor*, 353 U.S. 553, 564-5 (1957).

Clearly, Congress has not, either in the Pension Disclosure Act or any other act, authorized state interference with the pension arrangements (or the arrangements on the other terms and conditions of employment mentioned above) worked out by parties to a collective bargaining agreement.

A review of the statute and its legislative history further indicates that Congress did not intend to preserve legislation like the Minnesota Pension Act. The Court of Appeals so held (A-127-129); 545 F.2d at 608-9. This conclusion is required by a consideration of the particular problem Congress dealt with in the Pension Disclosure Act and by reference to specific evidence in the statute and legislative history.

First, the Pension Disclosure Act was enacted to attack corrupt management of the substantial sums of money that are invested in welfare and pension plans. Some of the specific abuses were embezzlement, improper insurance commissions and service fees, kickbacks, wasteful switching of policies, and collusion between union, management, and insurance officials. *See generally* 104 Cong. Rec. 7049 (1958) (Remarks of Senator John F. Kennedy); 104 Cong. Rec. 7060 (1958) (Remarks of Senator Douglas).

As the Court of Appeals correctly pointed out, the Pension Disclosure Act was *not* directed at the substantive terms of pension plans (A-127-128); 545 F.2d at 608:

> The legislative history emphasizes the limited purpose of this legislation and *that the Act's provisions do not affect substantive terms of employee benefit plans.* (Emphasis added).

Senator John F. Kennedy, one of the major proponents of the Pension Disclosure Act, recognized this when he said:

[S. 2888] interferes in no way with the right of contract or the form the plan will take. It merely provides that whoever manages the plan will make a report of the financial operations and reserves in the plan. 104 Cong. Rec. 7052 (1958). (Emphasis added).

In *Sylvania Electric Products, Inc. v. NLRB,* 358 F.2d 591, 592 (1st Cir.), *cert. denied,* 385 U.S. 852 (1966), the court made this point quite well when it said:

The Act does not purport to expand the scope of "wages, hours, and other terms and conditions of employment" under the National Labor Relations Act. *In fact, it does not purport to affect the course of collective bargaining relations at all.* Rather, the Disclosure Act seems designed to protect the rights of employees covered by actual, not proposed, welfare programs, by compelling the employer who administers them to make disclosures of the sort owed by a fiduciary to *cestuis que trustent.* 358 F.2d at 592. (Emphasis added).

Thus, the Pension Disclosure Act was enacted to deal with corruption and mismanagement of funds, and not to deal with the substantive terms of pension plans. The federal statute emphasized a reporting and disclosure mechanism to attack the problems of corruption and mismanagement. But Congress recognized that the states had traditionally used other means to attack corruption and mismanagement. Thus Congress made sure that its limited measure did not hamper the states' ongoing efforts to catch thieves, prevent insurance abuse and require proper auditing procedures.[13]

Second, it is clear, from the language of the savings clause and the legislative history pertaining to that clause, what state laws Congress intended to save. The statute

13. Contrary to the suggestion of the Solicitor General (SGB 16-17, n.15), federal substantive law applies in suits to enforce collectively bargained pension agreements. *Teamsters v. Lucas Flour Co.,* 369 U.S. 95 (1962).

refers to state laws "affecting the operation or administration" of pension plans. The words "operation and administration" clearly relate to the mechanics of implementing and managing a plan whose terms have already been established. That language simply cannot be strained to include the imposition, modification or destruction of the substantive terms of a plan. On the face of the statute, therefore, the argument of the State and the Solicitor General fails.

The pertinent Senate Report makes it clear that the only state regulation contemplated by the Act was that relating to "insurance" and "trusts" and "other phases of [the] operations" of pension plans. That Senate Report, in part, reads:

* * * [The Pension Disclosure Act] is designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, *to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations,* and to place the least possible burden by way of cost and otherwise upon the plans and upon the Federal Government. S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News,* 4137, 4154. (Emphasis added).

The Eighth Circuit recognized the types of state laws that Congress meant to preserve and read Section 309(b) accordingly:

Clearly, the preemption disclaimer provision of the Disclosure Act, § 309(b), relates to *state statutes governing those obligations of trust undertaken by persons managing, administrating, or operating employee benefit funds, the violation of which gives rise to civil*

and criminal penalties. Accordingly, no warrant exists for construing this legislation to leave to a state the power to change substantive terms of pension plan agreements. (A-129); 545 F.2d at 609. (Emphasis added).

In 1958 no one had ever heard of legislation like the Minnesota Pension Act. At that time, Congress preserved trust law and state legislation aimed at arresting and prosecuting corruption.

Thacher v. United Construction Workers, 10 N.Y.2d 439, 180 N.E.2d 245, 224 N.Y.S.2d 657 (1962), to which the State refers (DB 33), makes clear the limited nature of state regulation permitted under the Pension Disclosure Act and the inapplicability of the savings clause of that Act to the statute involved in the present case. *Thacher* involved a very narrow type of state regulation authorizing the state superintendent of insurance to take possession of and liquidate bankrupt trust funds. This was state regulation classically of the kind permitted by the savings clause of the Pension Disclosure Act, that is, regulation pertaining to insurance and trusts and the administration of pension funds. What is most significant about *Thacher* for our purposes is that the court in *Thacher* expressly acknowledged that the state regulation before it was permitted only because it did not, as does the Minnesota Pension Act, prevent the carrying out of the terms of a collective bargaining agreement. Thus, the court in *Thacher*, after noting that *Oliver* meant that "no State statute could be applied to prevent the carrying out of the collective bargaining agreement," held that the regulation before it could be upheld since "the State Insurance Department is doing nothing to prevent the 'carrying out' of the Welfare Fund agreement but is exercising a power as to liquidation." 10 N.Y.2d at 445, 180 N.E.2d at 247, 224 N.Y.S.2d at 661.

The State and the Solicitor General suggest that the enactment by Congress, on September 2, 1974, of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001, *et seq.*, somehow proves that Congress had earlier ceded to the states authority to control substantive terms of collectively bargained pension plans. The State pressed the same argument before the District Court and the Court of Appeals without success. ERISA was passed and became effective *after* the Minnesota Pension Act and *after* the termination of the Plan. It is impossible to see how a decision by Congress to enact pension legislation can, in itself, be said to sanction similar state legislation in an area which Congress has otherwise preempted.[14] State legislation is preempted even where it covers the same subject as a federal statute. Thus, in *Connell Construction Co. v. Plumbers & Steamfitters,* 421 U.S. 616 (1975), *rehearing denied,* 423 U.S. 884, this Court held that a state antitrust law was preempted by federal labor law even though the state law prohibited conduct which was also illegal under federal antitrust law. 421 U.S. at 635-36.

14. The State suggests that ERISA interferes with the terms of pension plans more directly than the Minnesota Pension Act does. This is an inaccurate statement as a relevant example will demonstrate. The primary impact of the Minnesota Pension Act against White is to nullify the contractual provisions of the White-UAW pension agreements limiting White's obligations to following a thirty-five year funding schedule so long as the pension plan was in effect. As to funding, ERISA provides that for plans in existence on January 1, 1974, the past-service liability of the plan must be funded over a forty-year period, 29 U.S.C. §1082(b)(2), but also provides that, in the case of union negotiated plans, ERISA funding requirements will apply only to plan years beginning after the collective bargaining agreement in effect on January 1, 1974 terminates or plan years beginning after 1980, whichever is earlier, 29 U.S.C. §§1061(c)(1) and 1086(c)(1). ERISA thus set funding schedules less burdensome than the 30 to 35 year funding schedules in common practice and, even as to the 40 year funding provision, gave parties to collective bargaining agreements the right to negotiate matters of pensions before fixed ERISA funding obligations became effective.

Nor can Congress' deferral of the date when ERISA preempted state legislation be considered as recognizing a preexisting power of states to enact pension legislation which otherwise conflicts with federal labor law. The ERISA provision in question merely postpones the preemptive effect of ERISA itself until January 1, 1975, thereby preserving valid pre-1975 state-created claims. It does not, and cannot, in bootstrap fashion, validate statutes whose application is barred for reasons independent of ERISA, in this case the preemptive effect of federal labor law. Further, as this Court has frequently observed, "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *United States v. Price*, 361 U.S. 304, 313 (1960). *See also, Waterman Steamship Corp. v. United States*, 381 U.S. 252, 269 (1965); *United States v. United Mine Workers*, 330 U.S. 258, 282 (1947).

If a state could enforce statutes modifying or abrogating negotiated pension plans, the balance established by Congress in respect of labor matters would be upset.[15] If that were to happen, then, as noted by the Court of Appeals, "in another day a differently-minded state legislature could take away from working people contract benefits obtained through hard, fair bargaining." (A-130); 545 F.2d at 610.

CONCLUSION

By reason of the passage of ERISA, the precise issue before the Court may not arise again, but the principles developed by the Court governing the application of federal labor law preemption will be called into play time and time again. The arguments advanced by the State and the

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15. See Cox, *Labor Law Preemption Revisited*, 85 HARV. L. REV. 1337, 1352 (1972).

Solicitor General are totally at odds with the decisions of this Court on the nature and scope of federal labor law preemption, and cannot be accepted unless this Court is prepared to undermine the labor law preemption principle.

We respectfully submit that the Court should affirm the judgment entered in the cause by the United States Court of Appeals for the Eighth Circuit.

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